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KCC 4948
(K-C 17,907)
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of David W. Koenig, et al. Art Unit 3761
Serial No. 10/608,661
Filed June 27, 2003
Confirmation No. 7070
For WIPE COMPRISING A PATHOGEN SELECTIVE ANTIMICROBIAL

July 28, 2005

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS,
SIR:

RESPONSE TO RESTRICTION REQUIREMENT

This letter is in response to the Office action dated June 28, 2005 in which an election was required between the following groups of claims:

Group I: Claims 1-18 directed to a wet wipe comprising a wipe substrate and a liquid formulation, the liquid formulation comprising a Yucca species extract and a broad spectrum antimicrobial (class 604, subclass 360); and

Group II: Claims 19-30 directed to a method for improving skin health comprising contacting the skin with a wet wipe comprising a wipe substrate and a liquid formulation, the liquid formulation comprising a Yucca species extract (class 604, subclass 290).

Reconsideration of the restriction requirement is respectfully requested. According to 35 U.S.C. §121, a restriction is proper only if there are at least two independent and distinct inventions. Furthermore, "[i]f the search and

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examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions."¹

In this case, restriction is not proper. The claims of Group II have a common element with the claims of Group I, a wet wipe comprising a wipe substrate and a liquid formulation, the liquid formulation comprising a Yucca species extract. Any search of the prior art and examination involving Group I claims therefore, will substantially co-extend with the search and examination of Group II claims. Furthermore, both Group I and Group II claims have been classified in class 604. Thus, Group I and Group II claims may be searched and examined together without undue burden in accordance with MPEP §803.

Subject to the foregoing traverse, the claims of Group I (claims 1-18) are elected for examination in this application.

The Office has also required an election of species if Group I is selected, between (1) broad spectrum antimicrobial and (2) natural broad spectrum antimicrobial. Initially, applicants note that broad spectrum antimicrobial is generic to synthetic broad spectrum antimicrobial and to natural broad spectrum antimicrobial. Therefore, for purposes of this response, it is assumed that the Office means to require an election between (1) synthetic broad spectrum antimicrobial and (2) natural broad spectrum antimicrobial. In light of this distinction, applicants elect (2) natural broad spectrum antimicrobial. Claims 1-5 and 7-30 read on the elected species.

¹ MPEP §803 (emphasis added).

KCC 4948
(K-C 17,907)
PATENT

Applicants reserve the right to file divisional applications directed to the subject matter of the non-elected claims.

The Commissioner is hereby authorized to charge any government fees which may be required to Deposit Account No. 19-1345.

Respectfully Submitted,



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Applicant's Name: David W. Koenig et al

Serial No. (Control No.): 10/608,661 Examiner: Hand, Melanie Jo

Filing Date: 6/27/03 Art Unit: 3761 Confirmation No.: 7070

Application Title: WIPE COMPRISING A PATHOGEN SELECTIVE
ANTIMICROBIAL

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